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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
50325-0504

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number	Filed
on ___August 25, 2005___	09/727,567	November 30, 2000
Signature _Teresa Austin_	First Named Inventor	
	Karen Ann Bradley	
Typed or printed name ___Teresa Austin___	Art Unit	Examiner
	2154	Kenny S. Lin

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number ___56,181___

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Stoycho Draganoff
Signature

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Telephone number

___August 25, 2005___
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of ___6___ forms are submitted.

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants respectfully request review of the Final Office Action in the present application for the following reasons, in accordance with the "Pre-Appeal Brief Conference Pilot Program" announced in the OG Notice of July 12, 2005.

Claims 1, 4, 6-7, 10, 12-13, 16, 18-19, and 21 stand rejected under 35 U.S.C. § 103(a) over U.S. Pat. No. 5,974,237 ("SHURMER"), in view of "Describing Your Data: DTDs and XML Schemas" ("LAURENT"). Claims 2, 8, 14, 20, and 22 stand rejected under 35 U.S.C. § 103(a) over SHURMER in view of LAURENT and further in view of "Official Notice."

The Office Action is clearly erroneous because the references lack specific claim steps.

I.   SHURMER Does Not Disclose Monitoring a Service Level Contract.

Independent Claims 1, 7, 13, and 19 all recite: "receiving a schema that provides a configuration for **monitoring a service level contract between the service provider and a particular customer.**" The Office Action asserts that this feature is described in SHURMER, in col. 7, lines 42-46, col. 8, lines 3-14, and col. 14, lines 39-48. However, SHURMER does not describe a service level contract. In col. 7, lines 42-46, SHURMER states:

By monitoring the element signals of each network element of interest in relation

to a selected performance or service parameter, selected at the user interface 24,

the user may identify problems or inefficiencies in the communications network.

No service level contract between the service provider and a particular customer is described. No monitoring of such a contract is described.

In col. 8, lines 3-14, SHURMER states:

Monitoring of a communications network at the network or service levels may be

particularly useful as a diagnostic tool for improving the speed at which a

complaint or query received from a customer of a communications network

service may be investigated, and to identify particular elements of the network

which are problematic to one or more customers of the network. Additionally,

monitoring of operational parameters at the network or service levels may

1

Docket No. 50325-0504 (Seq. No. 3878)

enable non-technical business manager users to identify patterns of customer

usage of a network, with a view to developing new customer service packages to

be supported on the network.

While the above passage may be describing monitoring a service level in response to a complaint by a user, nothing in the above passage describes monitoring a **service level contract** between **a service provider and a particular customer**. The claims relate to determining conformance with a service level contract, so a proper reference must disclose a contract. In SHURMER, service levels are monitored for identifying slow network elements or broad patterns of customer usage, but not as part of a service level contract between a service provider and a particular customer.

In col. 14, lines 39-48, SHURMER states:

A Service Associated Network Spec Element object defines a set of performance

parameters to be monitored from individual components of network elements with

respect to a set of services. The Service Associated Network Spec Element object

forms the basis of the service level monitoring of a network. The performance of

a network element can be measured with respect to a specified service which will

only measure the performance data on the individual component parts of the node

element or switch, that the service connection traverses.

Nothing in the above passage describes a service level contract between a service provider and a particular customer. Neither the passages cited above, nor any other passage in SHURMER, describes a service level contract between a service provider and a particular customer. SHURMER does not describe or suggest that any service level parameters are specified in a service level contract between a service provider (such as, for example, an ISP) and a customer (such as, for example, a business organization). In contrast, Claims 1, 7, 13, and 19 recite monitoring a service level contract between a service provider and a particular customer.

Fundamentally, SHURMER describes monitoring of network parameters as they relate to the performance of the network from the perspective of a user. (See SHURMER, col. 20, lines 52-56). In contrast, the claims in the present application relate to monitoring compliance at a higher, business level at which a service provider, such as an ISP, provides services to a customer, such as an organization.

Docket No. 50325-0504 (Seq. No. 3878)

Further, neither SHURMER nor LAURENT teaches, describes, or suggests monitoring compliance of a service provider at a business level. Thus, SHURMER and LAURENT, whether taken alone or in combination, do not disclose or make obvious all features of independent Claims 1, 7, 13, and 19.

II.   SHURMER does not disclose data defining one or more metric tests for monitoring the level of network service being provided to the particular customer by the service provider, and each metric test measuring a level of service of a particular type of network operation, and including a set of one or more threshold values.

Independent Claims 1, 7, 13, and 19 recite "**a schema comprising data defining one or more metric tests for monitoring the level of network service being provided to the particular customer by the service provider, each said metric test measuring a level of service of a particular type of network operation, and including a set of one or more threshold values that correspond to a range of acceptable performance for the particular type of network operation.**" In alleging that SHURMER describes this feature, the Final Office Action does not specify what exactly in SHURMER corresponds to the above features. Instead, the Final Office Action provides a laundry list of citations to SHURMER (col. 1, lines 47-60, col. 6, lines 57-67, col. 7, lines 1-9, col. 8, lines 3-14, col. 14, lines 39-48, col. 16, lines 39-43, col. 20, lines 52-56, col. 21, lines 18-25 and 50-53, col. 25, lines 57-67, and col. 26, lines 1-3 and 40-52). But neither the passages on the above laundry list, nor any other part of SHURMER, describe the above features of independent claims 1, 7, 13, and 19.

In a Reply to Office Action mailed March 30, 2005 (hereinafter Reply), the Applicants have provided comprehensive and specific arguments of why SHURMER does not describe the above features. Specifically, in page 11 of the Reply, in section I., Applicants show why SHURMER does not describe metric tests. In page 12 of the Reply, section II., Applicants show why SHURMER does not describe measuring a level of service of a particular type of network operation. In page 13 of the Reply, section III., Applicants show why SHURMER does not describe metric tests that include a set of one or more threshold values that correspond to a range of acceptable performance for the particular type of network operation.

In addition, since SHURMER does not describe monitoring a service level contract between a service provider and a particular customer, SHURMER cannot possibly describe a

schema that comprises data defining one or more metric tests for monitoring a level of network service **specified in such contract**, as recited in independent Claims 1, 7, 13, and 19.

In responding to Applicants' arguments, in page 12, the Final Office Action states that "Shurmer taught to define metric tests by inputting a set of operational parameters to be monitored (e.g. **threshold values to be compared or measured**; col. 25, lines 57-67, col. 26, lines 1-3, 40-52). The operational parameter or sets of operational parameters relate to the performance of particular network operations (abstract, col. 1, lines 47-63, col. 21, lines 18-25, 50-53)." (Emphasis added.) Thus, the Final Office Action seems to assert that operation parameters described in col. 25, line 57 to col. 26, line 3, in SHURMER correspond to BOTH the metric tests AND the threshold values featured in independent Claims 1, 7, 13, and 19. This is clear error.

An operational parameter, which can be monitored at a service level, such as usage of data per connection per user, bandwidth utilization of a connection, and cell discards (see SHURMER, col. 25, lines 45-46 and 57-62), is not a metric **test** for monitoring the level of network service specified in a service level contract between a service provider and a particular customer, as recited in Claims 1, 7, 13, and 19. Further, such a parameter is not a threshold value that corresponds to **a range of acceptable performance** for a particular type of network operation either. Nothing in SHURMER describes values that correspond to a range of acceptable performance for a service level, as recited in Claims 1, 7, 13, and 19.

Therefore, SHURMER and LAURENT, alone or in combination, do not describe the above features of independent Claims 1, 7, 13, and 19.

III. **SHURMER does not disclose distributing the one or more metric tests to one or more agents, wherein the one or more agents configure devices associated with the network to automatically perform the one or more metric tests during the specific time range, and receive result information from the devices.**

In page 13 of the Reply, in section IV., Applicants show why SHURMER does not describe the feature of independent Claims 1, 7, 13, and 19 of distributing metric tests to agents to automatically perform one or more metric tests, and receiving result information from the devices performing the one or more metric tests.

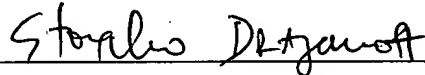**IV.** **SHURMER does not disclose the features of dependent Claims 2, 8, 14, and 20.**

In page 15 of the Reply, in the section titled "**DEPENDENT CLAIMS 2, 8, 14, and 20**", the Applicants show why SHURMER does not describe the features of dependent Claims 2, 8, 14, and 20 of (1) determining for each metric test whether the result information is within the one or more threshold values included in that metric test, and (2) creating and storing reporting information that indicates whether the customer is actually receiving the level of network service specified in the service level contract.

Applicants respectfully submit that the Final Office Action is clearly erroneous because the references lack the specific claim steps identified above. Therefore, Applicants believe the claims are presently in condition for allowance. Reconsideration is respectfully requested.

Respectfully submitted,

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5